SENATE RECORD VOTE ANALYSIS

104th Congress		June 7, 1995, 5:34 p.m.
1st Session	**Vote No. 239**	Page S-7849 Temp. Record

TERRORISM PREVENTION/Extra Appeal to Demonstrate Innocence

SUBJECT: Comprehensive Terrorism Prevention Act of 1995 . . . S. 735. Hatch motion to table the Levin amendment No. 1211 to the Hatch substitute amendment No. 1199.

ACTION: MOTION TO TABLE AGREED TO, 62-37

SYNOPSIS: As reported, S. 735 will enact law enforcement provisions to prevent terrorism and to apprehend and punish terrorists, and will reform Federal and State capital and noncapital habeas corpus procedures.

The Hatch substitute amendment to S. 735 would make major revisions to the bill, particularly to the provisions regarding international terrorism, alien removal, and fundraising by terrorist organizations.

The Levin amendment would permit a Federal court to hold an evidentiary hearing on a first or successive habeas corpus claim if that claim rested on a factual predicate that could not have been previously discovered through the exercise of due diligence and if the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish that a constitutional violation had probably resulted in the conviction of a person who was "actually innocent" of the underlying offense. ("Habeas corpus" in the context of this debate refers to the collateral (not on the merits) review of criminal convictions. State and Federal prisoners may file habeas corpus petitions alleging that constitutional, legal, or treaty requirements were violated in the process of convicting them. State prisoners may file petitions in State or Federal courts; Federal prisoners may file petitions only in Federal courts; District of Columbia prisoners may file petitions only in non--Federal, District courts. The right of a State prisoner to file a habeas petition in a Federal court is a right that was granted by statute.)

Debate was limited by unanimous consent. Following debate, Senator Hatch moved to table the Levin amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

Those favoring the motion to table contended:

The Levin amendment would provide one more avenue of escape for convicted murderers after their convictions have been upheld

(See other side)

YEAS (62)			NAYS (37)			NOT VOTING (1)	
Republicans (49 or 91%)		**Democrats** (13 or 29%)	**Republicans** (5 or 9%)	**Democrats** (32 or 71%)		**Republicans** (0)	**Democrats** (1)
Abraham	Helms	Baucus	Chafee	Akaka	Inouye		Conrad-[2]
Ashcroft	Hutchison	Breaux	Hatfield	Biden	Kennedy		
Bennett	Inhofe	Byrd	Jeffords	Bingaman	Kerry		
Bond	Kassebaum	Exon	Packwood	Boxer	Kohl		
Brown	Kempthorne	Feinstein	Specter	Bradley	Lautenberg		
Burns	Kyl	Ford		Bryan	Leahy		
Campbell	Lott	Johnston		Bumpers	Levin		
Coats	Lugar	Kerrey		Daschle	Mikulski		
Cochran	Mack	Lieberman		Dodd	Moseley-Braun		
Cohen	McCain	Nunn		Dorgan	Moynihan		
Coverdell	McConnell	Reid		Feingold	Murray		
Craig	Murkowski	Robb		Glenn	Pell		
D'Amato	Nickles	Rockefeller		Graham	Pryor		
DeWine	Pressler			Harkin	Sarbanes		
Dole	Roth			Heflin	Simon		
Domenici	Santorum			Hollings	Wellstone		
Faircloth	Shelby						
Frist	Simpson						
Gorton	Smith						
Gramm	Snowe						
Grams	Stevens						
Grassley	Thomas						
Gregg	Thompson						
Hatch	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

Compiled and written by the staff of the Republican Policy Committee—Don Nickles, Chairman

repeatedly. It would let a Federal judge hold an evidentiary hearing if he decides by himself that the evidence will "probably" show that the convict was "actually" innocent of the crime, and was convicted due to constitutional error. If he found that the convict was "probably actually innocent," he could then order a new trial. This amendment may sound reasonable, but it will be used by liberal judges who are opposed to capital punishment to delay the imposition of the death penalty. Once a prisoner has been found to be guilty beyond a reasonable doubt by a State court, and once State and Federal appeals of that conviction have been upheld, that prisoner has had more than enough opportunity to state his case and has repeatedly been found guilty. Many Federal judges, though, are eager to find excuses to block the imposition of the death penalty. The lower the standard of review that they need to meet, the more often they are going to let capital prisoners delay their executions. Under the bill, if there is clear and convincing evidence that someone who is innocent of a crime has been convicted, then a Federal judge will be allowed to review a decision. The Levin amendment would only require a "probable" instead of a "clear and convincing" test. The average stay on death row is now 9 years because certain judges are always willing to hear new claims, new petitions, and new arguments by prisoners who have repeatedly been found guilty. Delays in the imposition of the death penalty thwart the imposition of the sentence that has been determined to be just, which is death. Death row inmates should not be able to thwart justice by remaining alive through endless appeals of their sentences. The Levin amendment would make it easier for them to do so. Therefore, we urge our colleagues to reject it.

Those opposing the motion to table contended:

The Levin amendment is very narrowly drawn to allow an additional appeal in conformance with the standard set forth in the 1995 Supreme Court case *Schlup* v. *Delo*. In that case, the Court ruled that Federal judges, in order to prevent a fundamental miscarriage of justice, may grant second and successive habeas writs for claims based on innocence without "a showing of cause and prejudice." In this decision, the courts relied heavily on the previous *Carrier* case, in which Justice O'Connor wrote that when a constitutional violation has "probably resulted in the conviction of one who is actually innocent, a Federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default." For a claim of innocence to be credible, new reliable evidence is needed. Such claims are extremely rare. Thus, the Levin amendment will apply to only a small number of cases, and it is in conformance with Supreme Court decisions. This amendment should not be tabled.